

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF SOUTH CAROLINA

IN THE MATTER OF:

Kenneth Oakley Bush,

Respondent.

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**NOTICE OF INTENT TO SEEK AN
ORDER REVOKING RESPONDENT'S
AGENT AND INVESTMENT ADVISER
REPRESENTATIVE REGISTRATIONS**

File Number 07008

The Securities Division of the Office of the Attorney General of the State of South Carolina (the "Division"), under the authority of the South Carolina Uniform Securities Act of 2005 (the "Act"), S.C. Code Ann. §§ 35-1-101 to 35-1-703 (Supp. 2007), and the Uniform Securities Act (the "Prior Act"), S.C. Code Ann. §§ 35-1-10 to 35-1-1590 (Supp. 2005), upon due consideration of the subject matter herein and having reason to believe that Kenneth Oakley Bush ("Bush" or "Respondent") should not be permitted to represent a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities and also should not be permitted to engage in the business of advising others as to the value of securities or the advisability of investing in, purchasing or selling securities, does hereby notify Respondent that the Division intends to seek the issuance of an order, pursuant to S.C. Code Ann. § 35-1-520 of the Prior Act, revoking Respondent's registrations as an agent and an investment adviser representative. The Division hereby includes in this Notice of Intent to Seek an Order Revoking Respondent's Agent and Investment Adviser Representative Registrations ("Notice of Intent") a statement of the reasons for the order that is sought, a statement of the civil penalty sought, and notice that a hearing will be scheduled if Respondent requests a hearing.

In accordance with Section 35-1-580 of the Prior Act, the Division hereby alleges the following:

FACTUAL HISTORY

1. Respondent, at all times material herein, was a resident of South Carolina.
2. Respondent, at all times material herein, maintained a home address of 354 Cottage Farm, Beaufort, South Carolina 29902.
3. During the time period on or about January 4, 1999 to on or about September 1, 2000, Respondent was employed with Raymond James Financial Services, Inc. ("Raymond James") and was registered with the Division as an agent of Raymond James.
4. On or about September 1, 2000, Respondent's employment with Raymond James terminated.
5. During the time period on or about September 1, 2000 to on or about October 21, 2005, Respondent was employed by Morgan Stanley Dean Witter & Co. ("Morgan Stanley").
6. During Respondent's employment with Morgan Stanley he was registered first with the Division as an agent of Morgan Stanley and, effective April 20, 2005, as an agent and investment adviser representative.
7. During Respondent's employment with Morgan Stanley his primary work location was the Morgan Stanley office located at 46 Sam's Point Road, Beaufort, South Carolina 29907.
8. On or around October 21, 2005, Respondent became employed with Merrill, Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch").

9. On or around October 21, 2005, Respondent registered with the Division as an agent and investment adviser representative of Merrill Lynch.
10. As of October 1, 2008, Respondent continued to be employed by Merrill Lynch and registered with the Division as an agent and investment adviser representative of Merrill Lynch.
11. In or about late 1999 or early 2000, while employed with Raymond James, Bush became the financial advisor to Mary Waters and Fred Waters, Jr. (collectively, "the Waters").
12. On or about September 1, 2000, when Respondent terminated employment with Raymond James, Respondent was allowed to retain clients he had brought to Raymond James if they chose to go with him to his new firm.
13. In or about mid-September, 2000, both Mary Waters and Fred Waters, Jr. opened individual investment accounts at Morgan Stanley.
14. On or about June 14, 2001, both Mary Waters and Fred Waters established "Revocable Trust Accounts" at Morgan Stanley.
15. Bush was designated as the "Financial Advisor" on statements reflecting activity in the individual accounts belonging to Mary Waters and Fred Waters and on the statements reflecting activity in the trust accounts opened by each of them.
16. On or about June 23, 2001, Mary Waters died.
17. On information and belief, following Mary Waters' death, Fred Waters, Jr. moved into an assisted living facility.
18. At the time of Mary Waters' death, Fred Waters was approximately 85 years old.

19. At the time of Mary Waters' death, her Revocable Trust Account became an Irrevocable Trust Account with Fred Waters as trustee pursuant to the trust agreement executed on or about June 14, 2001.
20. Upon information and belief, on or about July 3, 2001, Fred Waters resigned as trustee and appointed Morgan Stanley Dean Witter Trust as successor trustee.
21. On or about August 25, 2001, Fred Waters requested Morgan Stanley Dean Witter Trust resign and Fred Waters reassumed the trusteeship.
22. Upon information and belief, Respondent began assisting with the payment of routine expenses for Fred Waters.
23. Upon information and belief, Respondent was given a Power of Attorney and added as an authorized signer on checking account number 8100682635 at Carolina First Bank (the "Carolina First account").
24. At the time Respondent was added as an authorized signer on the Carolina First Account, the account was jointly held by Fred and Mary Waters.
25. In or about January, 2002, Respondent began writing checks to himself from the Carolina First account.
26. In or about February, 2002, Respondent began endorsing checks made payable to "cash" from the Carolina First account.
27. From in or about January, 2002, and continuing until in or about November, 2004, Respondent continued to write checks to himself from the Carolina First account.
28. From in or about January, 2002, and continuing until in or about November, 2004, Respondent deposited some of the checks written to himself into Wachovia Bank account number 751371030.

29. During the relevant time period, Wachovia Bank account number 751371030 was a joint personal bank account in Respondent and Respondent's wife's names and under Respondent and Respondent's wife's dominion and control.
30. During the time period January 1, 2002 through November 30, 2004, Respondent wrote seventy-one (71) checks to himself from the Carolina First account.
31. The checks Respondent wrote to himself from the Carolina First account totaled at least \$83,560.
32. During the time period January 1, 2002, through November 30, 2004, Respondent wrote at least four checks to "cash" from the Carolina First account that were endorsed by Respondent.
33. During the time period January 1, 2002, through November 31, 2004, Respondent cashed at least four checks Respondent had written from the Carolina First account and on which Respondent had listed "cash" as the payee.
34. The checks made payable to "cash" that Respondent cashed from the Carolina First Account during the January 1, 2002, to November 31, 2004, time period totaled at least \$2,025.
35. Throughout the relevant time period, deposits to the Carolina First account were made with checks drawn from Fred Waters' Morgan Stanley accounts.
36. On or about November 20, 2002, Respondent completed and signed a Branch Inspection Registered Personnel Questionnaire.
37. On the Branch Inspection Registered Personnel Questionnaire, Respondent indicated, among other responses, the following:

- a. In response to question 12a., "Have you received and reviewed the Code of Conduct and do you agree to be bound thereby?", Respondent answered "Yes."
 - b. In response to question 12b., "Are you aware of any violations of the Code of Conduct or any criminal statutes within the past year by yourself or other Morgan Stanley employees?", Respondent answered "No."
 - c. In response to question 15., "Have you borrowed or received any money or other items of value from any customer or other person with whom the Firm does business; or given or loaned any money or other items of value to such person?", Respondent answered "No."
38. Morgan Stanley's Code of Conduct manual specifies that written approval must be requested and received from the manager designated by the appropriate business unit or department to supervise employee trading activities (the "Designated Manager") and the Director of Compliance (or the Director's designee), before:
- a. engaging in any business other than that of the Firm; and
 - b. accepting employment or compensation from any person or organization other than the Firm.
39. On or about February 14, 2007, the Division opened an investigation concerning Respondent's activities concerning the Waters' securities accounts and whether Respondent engaged in activities regarding clients and client accounts the firm prohibited or prohibited without appropriate authorization while employed by Morgan Stanley.
40. On October 10, 2007, the Division spoke to Respondent about his professional background, his career in the securities industry, his relationship with the Waters

family and his involvement in financial transactions carried out by negotiating checks under a Power of Attorney that he held on the Waters' checking account at Carolina First.

41. Respondent was under oath at the time the Division spoke to Respondent on October 10, 2007.
42. Respondent's testimony on October 10, 2007, included the following statements:
 - a. Respondent joined a banking organization in the early 1980's.
 - b. The bank he worked for in the early 1980's had a contractual relationship with a full-service broker, Raymond James.
 - c. Respondent met Mary Waters and Fred Waters, Jr. while employed at Raymond James.
 - d. In mid-to-late 2000, the bank decided to terminate the contractual relationship with Raymond James.
 - e. Respondent joined the Morgan Stanley office in Beaufort in September 2000.
 - f. Because of the termination of the arrangement between the bank and Raymond James, Respondent was allowed to take his current client base with him to Morgan Stanley, if the clients chose to stay with him.
 - g. The Waters chose to move their accounts to Morgan Stanley with Respondent as their Financial Advisor.
 - h. Respondent did not have discretion in any of the Waters' Morgan Stanley investment accounts.
 - i. From time to time when Mary Waters was away from home, Fred Waters, Jr. stayed at a facility known as Seabrook on Hilton Head Island.

- j. Seabrook is a retirement community that incorporates assisted living facilities as well as retirement dwellings.
 - k. Mary Waters became ill and entered the hospital in June, 2001.
 - l. Mary Waters died on June 23, 2001.
 - m. Fred Waters was residing at Seabrook when Mary Waters died.
 - n. Following Mary Waters' death, Fred Waters, Jr. decided to remain at Seabrook.
 - o. At some point before Mary Water's death, Respondent was given a Power of Attorney on the Waters' checking account at Carolina First bank.
 - p. Respondent began assisting Fred Waters, Jr. by paying bills that were received at the residence.
 - q. Requests for checks were submitted by Respondent to Morgan Stanley Trust.
 - r. Checks received from Morgan Stanley Trust were deposited into account number 8100682635 at Carolina First Bank.
 - s. Respondent did not specifically notify Morgan Stanley that he had signing authority on the Waters' checking account at Carolina First.
43. During testimony October 10, 2007:
- a. Respondent admitted he had received funds from the Waters' Carolina First checking account.
 - b. Respondent alleged that payments to himself from the Carolina First checking account were for professional and personal services.
 - c. Respondent alleged that he received written authorization from Fred Waters, Jr. for the payments he received.

- d. Respondent alleged that he kept records on a disk in his office of professional and personal services rendered to Fred Waters, Jr. for which he was paid by checks written to himself from the Waters' Carolina First account.
 - e. Respondent alleged that the records he kept documenting his services to Fred Waters, Jr. were left in the Morgan Stanley Beaufort office when he left and became an employee of Merrill Lynch.
 - f. Respondent indicated he did not feel that paying himself for services outside of Morgan Stanley was a conflict with Morgan Stanley.
44. Respondent has been unable to provide evidence other than his own self-serving oral testimony that he had authorization to withdraw funds from the Waters' Carolina First account for his own personal use.
45. The appropriate personnel at Morgan Stanley have searched and have been unable to locate the disk or any of the other documentation the Respondent alleges he left in the Morgan Stanley Beaufort office when he terminated employment with Morgan Stanley.
46. Morgan Stanley's Code of Conduct in effect at the time Respondent was added as a signatory to the Carolina First account and began writing checks to himself required Respondent to obtain written approval from the Designated Manager and the Director of Compliance (or the Director's designee) before accepting employment or compensation from any person or organization other than the Firm.
47. Respondent did not obtain written approval from Morgan Stanley's Designated Manager or Director of Compliance (or the Director's designee) before taking or accepting compensation from the Waters' checking account.

48. Respondent did not disclose the receipt of the above compensation from the Waters' checking account to appropriate personnel at Morgan Stanley during his employment with the firm.
49. On information and belief, Respondent entered into the following fiduciary relationships with other Morgan Stanley customers:
- a. Power of Attorney for Betty S. Bercik dated 3/13/2000;
 - b. Power of Attorney for Joseph E. Bercik dated 3/13/2000;
 - c. Power of Attorney for Dwight Freeman dated 3/7/2003;
 - d. Power of Attorney for Mae O. Henderson dated 4/25/2001;
 - e. Successor Trustee for the Mae O. Henderson Trust dated 11/20/2001;
 - f. Power of Attorney for Charles P. Sandifer dated 5/4/2004;
 - g. Successor Trustee for the Richard F. Wilke Trust dated 5/21/2003; and
 - h. Trustee of the Richard F. Wilke Trust dated 5/21/2003 upon the medical incapacity of Richard F. Wilke.
50. On information and belief, appropriate Morgan Stanley personnel did not grant approval for any of the fiduciary relationships itemized above.

APPLICABLE LAW

51. Pursuant to Section 35-1-701(a) of the Act, the Prior Act exclusively governs all actions or proceedings that may be instituted on the basis of conduct occurring before the effective date of the Act.
52. The Act took effect January 1, 2006.

53. Pursuant to Section 35-1-520 (1) of the Prior Act, the Securities Commissioner may by order, suspend or revoke any registration if he finds (a) that the order is in the public interest and (b) that the registrant:
- (i) has wilfully violated or wilfully failed to comply with any provision of the Prior Act or a predecessor law or any rule or order under the Prior Act or a predecessor law; or
 - (ii) has engaged in dishonest or unethical practices in the securities business.
54. Pursuant to S.C. Code Ann. § 35-1-580 of the Prior Act, no order may be entered under any part of Sections 35-1-520 to 35-1-570 or Section 35-1-1475 except the first sentence of Section 35-1-550 without (a) appropriate prior notice to the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, (b) opportunity for hearing, and (c) written findings of fact and conclusions of law.
55. Pursuant to Section 35-1-160 of the Prior Act, it is unlawful for any person to make or cause to be made in any proceeding under the Prior Act, a statement which is, at the time and in light of the circumstances under which it is made, false or misleading in any material respect.
56. Pursuant to Order Number 97006, each agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.
57. Pursuant to Order Number 97006, conduct such as non-disclosure or manipulative or deceptive practices, including violating firm policy and/or lying on firm compliance documents is behavior which is considered contrary to the high standards agents are

required to observe and may constitute grounds for denial, suspension or revocation of registration or such other action authorized by statute.

58. Pursuant to Order Number 97010, each investment adviser representative shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.
59. Pursuant to Order Number 97010, conduct such as manipulative or deceptive practices, including violating firm policy, and/or lying on firm compliance documents is behavior which is considered contrary to the high standards investment adviser representatives are required to observe and may constitute grounds for denial, suspension or revocation of registration or such other action as authorized by statute.
60. Pursuant to Order Number 98001, every investment adviser registered under the Act is required to make and keep true, accurate and current the following books, ledgers and records: (a) a list or other record of all accounts which identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client; (b) a copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser; and, (c) for an investment adviser who has custody or possession of securities or funds of any client, a journal or other record showing all purchases, sales, receipts and deliveries of securities for all accounts and all other debits and credits to the accounts.
61. Pursuant to Order Number 98001, the records required pursuant to Order Number 98001 shall be maintained and preserved in an easily accessible place for a period of

not less than five years from the end of the fiscal year during which the last entry was made on the record.

62. Pursuant to Order Number 97010, conduct by an investment adviser representative such as failing to provide to the investment adviser representative's employer the books, ledger and records, or other information, to allow the firm to comply with Order Number 98001 is behavior which is considered contrary to the high standards investment adviser representatives are required to observe and may constitute grounds for denial, suspension or revocation of registration or such other action as authorized by statute.

DIVISION'S DETERMINATION

63. WHEREAS, based on the foregoing, the Division has made the following determinations:
- a. Respondent was given a Power of Attorney and added as an authorized signer on checking account number 8100682635 at Carolina First Bank.
 - b. Beginning in or about January 2002, and continuing until in or about November, 2004, Respondent both wrote himself checks off the Waters' account and wrote checks payable to "cash" which he then endorsed off the account.
 - c. Respondent failed to notify his employer, through which he was registered as an agent and, after April 20, 2005, as an investment adviser representative, that he had a power of attorney and the ability to sign on a client's account.
 - d. An agent or investment adviser representative with the ability to sign on a client's account can exercise discretionary authority over the client's account and Respondent knew or should have known this.

- e. An agent or investment adviser representative with a power of attorney on a client's account can exercise discretionary authority over the client's account and Respondent knew or should have known this.
- f. During the period on or about January 1, 2002, through November 31, 2004, Respondent borrowed or received money from a customer.
- g. During the period on or about January 1, 2002, through November 31, 2004, Respondent was aware of violations of the Morgan Stanley Code of Conduct and/or criminal statutes by himself.
- h. In responding to a Morgan Stanley Branch Inspection Registered Personnel Questionnaire on or about November 20, 2002, Respondent provided information he knew to be false when he both denied he had knowledge of any violations of the firm's Code of Conduct or any criminal statutes within the past year by himself and when he indicated he had not borrowed or received any money or other items of value from any customer or other person with whom Morgan Stanley does business.
- i. Respondent violated Morgan Stanley's Code of Conduct, as set forth in the firm's Code of Conduct manual, by failing to get written approval by the Designated Manager and the Director of Compliance (or the Director's designee) before (a) engaging in any business other than that of Morgan Stanley and (b) accepting employment or compensation from a person or organization other than Morgan Stanley.
- j. Respondent did not notify appropriate Morgan Stanley personnel that he had signing authority on the Waters' Carolina First account so that Morgan Stanley

could maintain or require Respondent to maintain appropriate records showing all debits and credits and other entries to the account, as required by the books and records requirements in place at the time the money was removed from the account.

- k. Respondent did not get approval from appropriate Morgan Stanley personnel prior to entering into fiduciary relationships with at least four additional Morgan Stanley customers.

64. WHEREAS, based on the following, the Division has determined that Respondent has engaged in an act, practice, or course of business constituting a violation of the Prior Act or a rule adopted or order issued under the Prior Act or a predecessor Act as follows:

- a. Respondent has violated Order Number 97006 by engaging in non-disclosure and manipulative and deceptive practices, including violating firm policy and lying on firm compliance documents;
- b. Respondent has violated Order Number 97010 by engaging in non-disclosure and manipulative and deceptive practices, including violating firm policy and lying on firm compliance documents; and

65. Respondent's violations of the Prior Act and/or rules or orders under the prior Act (as set forth above) were willful, and

66. It is in the public interest to (1) revoke Respondent's agent and investment adviser registrations in the State of South Carolina so that Respondent may not represent a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities and also may not engage in the business of advising others as to the value

of securities or the advisability of investing in, purchasing, or selling securities and (2) fine Respondent in the amount of five thousand (\$5,000.00) dollars per violation for each of the violations by Respondent of Order Number 97006 and Order Number 97010.

REQUESTED RELIEF

67. The Division requests that the Commissioner grant the following relief against Respondent:
- a. Pursuant to Section 35-1-520 of the Prior Act, revoke the Respondent's registration as an agent in the State of South Carolina;
 - b. Pursuant to Section 35-1-520 of the Prior Act, revoke the Respondent's registration as an investment adviser representative in the State of South Carolina;
 - c. Pursuant to Section 35-1-1475 of the Prior Act, order Respondent to pay an administrative fine in an amount not exceeding five thousand (\$5,000.00) dollars for each violation of the Prior Act and each violation of any rule or order promulgated by the Commissioner pursuant to the Prior Act; and
 - d. Order any other relief that the Commissioner deems appropriate.

NOTICE AND OPPORTUNITY FOR A HEARING

NOTICE is hereby given that the Respondent shall have thirty (30) days from the date of receipt of this Notice of Intent to give written notice requesting a hearing on the matters contained herein to Thresechia Navarro, Securities Division, Post Office Box 11549, Columbia, South Carolina, 29211-1549. In the written Answer, Respondent, in addition to requesting a hearing, shall admit or deny each factual allegation in this Order, shall set forth specific facts on which the Respondent relies, and shall set forth concisely the matters of law and affirmative

defenses upon which the Respondent relies. If Respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state.

Within fifteen (15) days of receipt of a written notice requesting a hearing, this matter will be scheduled for a hearing. Respondent may then appear, with or without the assistance of an attorney, at the hearing to present testimony, evidence, and argument relating to the matters contained herein. In the event such written notice requesting a hearing is not received within the above-stated thirty (30) day period of time, an Order Revoking Respondent's Agent and Investment Adviser Representative Registrations may be entered in this proceeding with no further notice.

By seeking to issue an Order Revoking Respondent's Agent and Investment Adviser Representative Registrations, the Division is not waiving any rights it may have to pursue additional remedies available to it for the above or other violations of the Act committed by the Respondent.

Executed and entered this the 11th day of December, 2008.

SOUTH CAROLINA OFFICE OF THE
ATTORNEY GENERAL

By: Tracy A. Meyers
Tracy A. Meyers
Assistant Attorney General
Securities Division
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-4731

STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
SECURITIES DIVISION

CERTIFICATE OF SERVICE AND
AFFIDAVIT OF COMPLIANCE
File Number 07008

I hereby certify that I served upon the individual/entity listed below a copy of the document indicated below and dated December 11, 2008 by serving a copy of said document upon the Securities Commissioner of the State of South Carolina and by placing a copy of said document in the United States mail, certified mail, return receipt requested, first class postage prepaid and addressed to:

Mr. Kenneth Oakley Bush
354 Cottage Farm
Beaufort, SC 29902

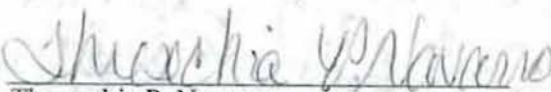
Merrill Lynch, Pierce, Fenner & Smith Inc.
Attn: Marla Moskowitz-Hesse
222 Broadway, 16th Floor
New York, NY 10038

Document(s): Notice of Intent to Seek an Order Revoking Respondent's Agent and Investment Adviser Representative Registrations

Mailed December 12, 2008 from Columbia, South Carolina.


I further hereby certify, swear and affirm that, service of the above-listed individual is in compliance with Section 35-1-1410, Code of Laws of South Carolina (Supp. 2004).

By:



Thresechia P. Navarro
South Carolina Attorney General's Office
Securities Division
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-4731

Subscribed and sworn to before me on
this 12 day of December, 2008.


Notary Public for South Carolina

My commission expires: May 10, 2010